William Hancock, Esq;
Leonard Hatfield, Gent. } Appellants.

Appeal from the Chancery of Ireland.

Sir *Arthur Shaen*, Baronet, RESPONDENT.

THE Respondent's CASE.

December 31. 1656. WENTWORTH, Late Earl of *Kildare*, being Seized in Fee of the Mannor Castle Town and Lands of *Killenure* and the several Villages, and Hamlets thereunto belonging, in the County of *Westmeath*, did by *Indenture*, in Consideration of 1250 *l.* Demise the same and several other Lands (which by reason of several Leases then in being, did not then yield above 100 *l. per Annum*) to Sir *James Shaen*, Knight and Baronet, now Deceas'd, (whose Son and Heir, and Administrator, the *Respondent* is) for 41 Years, from the day next before the Date of the said *Indenture*, at the Yearly Rent of 110 *l.*

December 24. 1659. The said Earl in Consideration of 250 *l.* did by *Indenture*, Demise the Reversion to *John Humphrys*, for 99 Years, from the Date in Trust, for the said Sir *James Shaen*, at the Yearly Rent of 100 *l.*

25th *and* 26th *of* May, 1660. *Wentworth*, Earl of *Kildare*, with the Consent of the Right Honourable *John* Earl of *Clare*, (whose Daughter the said Earl of *Kildare* had Married) and of the Honourable *Robert Boyle*, Esq; in Consideration of 1000 *l.* Conveyed the said Lands and Premisses to *Arthur Annesley*, Esq; afterwards Earl of *Anglesey*, and others and their Heirs, in Trust for Sir *James Shaen* and his Heirs.

Soon afterwards, by Direction of the said Earl of *Kildare*, and *John* Earl of *Clare*, the said Lands were ordered to be left out, and were accordingly left out of the said Earl of *Kildare*'s Rent-Roll, having been Purchased by Sir *James Shaen*, as aforesaid.

Sir *James Shaen*, before and after that time, to *Michaelmas*, 1685, received the Rents of the Premisses in Question, from the *Appellants*, or from such as they derive under.

March 25. 1686. The Lease under which the *Appellants* Claimed expired, before which time and since, the *Appellants* made frequent Applications to Sir *James Shaen*, and to the Respondent, to renew their Leases at an Undervalue, which being refused, the *Appellants* threatned to set up the Earl of *Kildare*'s Title to the Premisses, pretending to be his Tenants, and that they had Attorned to him.

The *Respondent* after the Death of his Father, Sir *James Shaen*, exhibited his Bill in Equity against the *Appellants*, to be restored to the Possession of the Premisses in Question, and to compell them to Account for the mean Profits since the 25*th* of *March*, 1686, (when their Lease expired) they having been ever since, and still being in Possession of the said Lands.

The *Appellants* in their Answer insist, That they were never Tenants to Sir *James Shaen*, and that they are and were Tenants to *John* now Earl of *Kildare*, and believe him to have the best Title, tho the Appellant *Hancock*, in an Answer by him put into a former Bill, brought by the said Earl of *Kildare* against him and others in the Court of *Exchequer* in *Ireland*, set forth, That he was well assured, that the said Deeds of Lease, as also of the Reversion, were duly made to the said Sir *James Shaen*, or in Trust for him; and that he had duly paid the Rents to the said Sir *James* or by his Order; so that he and *Ridgley Hatfield*, under whom the Appellant *Hatfield* Claims, and all Claiming under the said *Ridgley*, held the Premisses as Sir *James* his Tenants, by Virtue of the Lease, for 29 Years, which he expected to hold till the end of the Term, which happened in 1686. And the Appellant *Hatfield*, by Writing under his Hand, made Proposals to take a new Lease from the *Respondent*'s Father, wherein he desired Sir *James* to continue his faithful Tenant, and prefer him to a future Tenancy. And it appeared by divers Proofs, that they were, and always owned themselves Tenants to the *Respondent* and his said Father.

Upon hearing the Cause, it was Decreed by the Court of *Chancery* in *Ireland*, That the *Respondent* should be restored to the Possession of the Lands in Question, by the Injunction of that Court, and the *Appellants* should Accouut for the mean Profits of the Premisses, from the said 25*th* of *March*, 1686, to the time of the Exhibiting of the Bill, at the Rate of 40 *l. per Ann.* being the old Rent, and from the time of Filing the said Bill, for the full value of the Lands; and that the *Appellants* should have an Account of such Money as they paid to the Lord *Ranelah*, by whom they receiv'd some Disturbance in the enjoymont of their Lease of 29 Years, and to whom they paid some Money for his Interest in the Lands.

That although the said Decree is so favourable to the said *Hancock* and *Hatfield*, as to order them to Account for the Premisses, (which are 500 *l. per Ann.*) at the Rate of 40 *l. per Ann.* only to the time of Exhibiting the Bill, (whereas, the *Respondent* is advised, they might, without Injustice, have Decreed them to Account for the real Value of the Land for that time) yet they have thought fit to Appeal from the said Decree; For that, as they pretend, the Earl of *Kildare* ought to have been (but was not) Party to the said Suit; and when they shall have paid their Rents to this *Respondent*, the said Earl, if he have Title, may force them to pay it over again to him.

But this *Respondent* is advised, and doth insist, That the said Decree is agreeable to Justice and the constant Course and Practice of all Courts of Equity in *Ireland*, which never permit Tenants, who hold over their Terms, to set up a Title in any other Person against their Landlord.

I. For that it is contrary to the Fidelity due from a Tenant to his Landlord, and a breach of the Trust reposed in him.

II. It would be of fatal Consequence to all the Protestant Proprietors in that Kingdom, whose Tenants (being generally *Papists*) would thereby be encouraged to betray the Possession to the old *Irish* Proprietors, and thereby necessitate their Protestant Landlords to be Plaintiffs in a Court of Law where they will be put strictly to make out their Title, which would be almost impossible to do, most Gentlemen's Evidences being lost or destroyed in the many Wars, Rebellions and Disorders that have happened in that Kingdom.

III. For that by the Decree, the Possession is only to be restored, which will not hurt the Earl's Right, if he has any, and therefore no need or occasion of making him Party to the Suit; and it seems much more reasonable, that the Earl (who and his Ancestors, have been out of Possession for near 50 Years, should not be put into Possession till they have made a Title at Law, than that the *Respondent* who hath been so long in Possession, should be stripped thereof by the ill Practice and Contrivance of his Tenants.

For which Reasons, the *Respondent* humbly hopes, your Lordships will affirm the Decree, and dismiss the Appeal with Costs.

The Earl of *Kildare*, (tho no Party to the Suit) has Petition'd your Lordships, setting forth the same thing as the *Appellants* have, but in regard it is without President to give Your Lordships any Trouble of this kind, the *Respondent* hopes Your Lordships will dismiss it with Costs.

Henry Poley,
Ric. Turner.